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SUPREME COURT, U.S.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1963

No. 7

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

ALABAMA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

PETITION FOR CERTIORARI FILED OCTOBER 22, 1963
CERTIORARI GRANTED JANUARY 6, 1964

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1963**

## No. 575

RALPH D. ABERNATHY, ET AL., PETITIONERS,

*vs.*

ALABAMA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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[fol. 595]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

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SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: Joseph Charles Jones, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: Joseph Charles Jones, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 598]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

v.

JOSEPH CHARLES JONES.

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MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The Bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company; a Delaware corporation, which in turn leases the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section

119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Joseph Charles Jones did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II Joseph Charles Jones did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized [fol. 599] nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. §316(d)), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, §8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, §8), of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought [fol. 600] against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this War-

rant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 N. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[fol. 601]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 605] [File endorsement omitted]

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[fol. 606]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

THE STATE OF ALABAMA.

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STATE OF ALABAMA,

v.

JOSEPH CHARLES JONES.

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8 DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and

immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is [fol. 607] interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, [fol. 608] custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand

trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct

calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affi- [fol. 609] davit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 [fol. 610] is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint [fol. 611] that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an in-

tegral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316 (d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations [fol. 612] of Count II of the affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police

personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 613]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

---

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—
November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the complaint, warrant and affidavit being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

---

STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

---

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

---

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

---

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

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STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

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STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

---

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

---

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

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[fol. 614]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

---

THE STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

---

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 615] of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 616]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

VS.

JOSEPH CHARLES JONES.

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MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence mad at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights [fol. 617] under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Section 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a [fol. 618] crime or offense on the basis of the facts proved

in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the Defendant: (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons;

and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, [fol. 619] and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the

due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contraven- [fol. 620] tion of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation

of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 622]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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THE STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

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ORDER DENYING MOTION FOR NEW TRIAL—
February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 623]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195.
WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the Court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 624] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objection as to the submission of the above said separate cases to the Appellate Court or Courts on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event the defendant in each of the aforesaid cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into

the record in each of said cases and that said Assignment of Errors may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts, just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At [fol. 625] the time of his arrest, defendant was seated at the lunch counter in the company of others of both Negro and white races in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff

M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit;

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 South McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

[File endorsement omitted]

[fol. 626] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 628]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 104

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JOSEPH CHARLES JONES,

v.

STATE.

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Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 629]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING —November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 630] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 44

Ex Parte JOSEPH CHARLES JONES

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IN RE: JOSEPH CHARLES JONES, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 104, Court of Appeals of Alabama)

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APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorney for Appellants:

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 631]

Ex Parte JOSEPH CHARLES JONES, Petitioner

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In Re: JOSEPH CHARLES JONES, Appellant,

vs.

STATE OF ALABAMA, Appellee.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Joseph Charles Jones, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Joseph Charles Jones was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and un-

certain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of [fol. 632] Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal

protection of the law guaranteed by the Fourteenth Amend-
[fol. 638] ment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured

by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

[fol. 634] 11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

[fol. 635] (g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, of in contravention of the commerce clause (Article 1, of the Constitution.

12. The court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the

Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

[fol. 636] Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama;

Attorneys for Petitioner.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

*Duly sworn to by Fred D. Gray, jurat omitted in printing.*

[fol. 637] Certificate of Service (omitted in printing).

[fol. 638] Clerks' Certificates to foregoing transcript (omitted in printing).

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[fol. 640] CLERK'S NOTE:

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the records here. Please see side folio 496, printed page 254.

[fol. 642]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. John David Maguire alias John David MacGuire, Defendant.

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IN COURT OF COMMON PLEAS

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler who being duly sworn, deposes and says on oath that in said County, on or about May 25, 1961, one John David Maguire alias MacGuire did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II. John David Maguire, MacGuire, did meet with two or more persons to commit a breach of the peace or.

to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge

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IN COURT OF COMMON PLEAS

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting: You are hereby commanded to arrest John David Maguire alias MacGuire and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I—Disorderly Conduct—T 14, Sec. 119 (1). Count II—Unlawful Assembly—T 14, Sec. 407, and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, 1961.

Alex A. Marks, Judge Court of Common Pleas of Montgomery

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[fol. 643]

IN THE COURT OF COMMON PLEAS

MONTGOMERY COUNTY, ALABAMA

No. 22,749

THE STATE,

vs.

JOHN DAVID MAGUIRE.

Charge: Disorderly Conduct and Unlawful Assembly.

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT.

5/25/61—Warrant issued and delivered to Sheriff

5/25/61—Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond)

5/29/61—Bond $1,000.00 approved and filed.

9/15/61—Defendant tried, convicted and fined $100.00 and the cost of the prosecution. In addition to fifteen (15) days in the County Jail

Bill of Cost

| | |
|---|---|
| Clerk's Fees | $ 2.50 |
| Solicitor's Fees | 10.00 |
| Sheriff's fees | 10.00 |
| Library fees | .50 |

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"Denied"
September 15, 1961 to exclude evidence—"denied"

Clerk's Certificate to Transcript (omitted in printing).

[fol. 644] [File endorsement omitted]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

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SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that;

Count 1: John David Maguire, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: John David Maguire did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety

for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

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[fol. 647]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

JOHN MAGUIRE.

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MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT —Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a white person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter

portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "John Maguire did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II. John Maguire did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or [fol. 648] boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant

and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and Warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., X316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, §8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free

access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, §8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful [fol. 649] and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing

of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[fol. 650] CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 654] [File endorsement omitted]

[fol. 655]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, STATE OF ALABAMA

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THE STATE OF ALABAMA,

v.

JOHN MAGUIRE.

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DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require de-

fendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is [fol. 656] interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316 (d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an ulawful and unconstitutional practice, cus-
[fol. 657] tom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, [fol. 658] offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affidavit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119 (1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section [fol. 659] 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader withont any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteeenth Amendment to the Constitution of the United States.

40. For that the complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

[fol. 660] 42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-state Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said County in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place [fol. 661] the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of peace or to do an unlawful act:"

Whereas Count II of the Complaint charges that the defendant:

> "Did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut;

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 662]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

---

STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

---

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

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STATE OF ALABAMA,
vs. 185
RALPH D. ABERNATHY.

---

STATE OF ALABAMA,
vs. 186
CLYDE L. CARTER.

---

STATE OF ALABAMA,
vs. 187
WILLIAM S. COFFIN, JR.

---

STATE OF ALABAMA,
vs. 188
JOSEPH CHARLES JONES.

---

STATE OF ALABAMA,
vs. 189
BERNARD S. LEE.

---

STATE OF ALABAMA,
vs. 190
JOHN DAVID MAGUIRE.

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STATE OF ALABAMA,
vs. 191
GAYLORD B. NOYCE.

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STATE OF ALABAMA,
vs. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. 193
GEORGE B. SMITH.

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STATE OF ALABAMA,
vs. 194
DAVID E. SWIFT.

---

STATE OF ALABAMA,
vs. 195
WYATT TEE WALKER.

---

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

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[fol. 663]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

---

STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

---

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 664] of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is Therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 665]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

JOHN MAGUIRE.

---

MOTION FOR A NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit; November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights [fol. 666] of due process of law guaranteed to Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Section 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this case was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate [fol. 667] Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this

case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the Defendant; (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of (il-

legible) acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to [fol. 668] classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the

due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act, Title 49, U. S. C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other [fol. 669] facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the defendant, on the basis of the facts proved in this case is an unconstitutional usurpation

of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 So. Union Street, Montgomery, Alabama.

Jack Greenberg, 10 Columbus Circle, New York, 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 671]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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THE STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

---

ORDER DENYING MOTION FOR NEW TRIAL—
February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 672]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

---

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

---

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

---

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

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STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

---

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

---

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

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STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the Court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 673] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objection to the submission of the above said separate cases to the Appellate Court or courts on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors

into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was refiled in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus terminal in Montgomery. At the time of his arrest, defendant was seated [fol. 674] at the lunch counter in the company of others of both the negro and white races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines; the lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons

of R. E. McRae; After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut;

Attorneys for Defendants.

By: Fred D. Gray.

[File endorsement omitted]

[fol. 675] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 676]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 106

JOHN DAVID MAGUIRE,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 677]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through His Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 678] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 46

EX PARTE JOHN DAVID MAGUIRE

In Re: JOHN DAVID MAGUIRE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 106, Court of Appeals of Alabama)

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APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 679]

Ex Parte JOHN DAVID MAGUIRE, Petitioner

In Re: JOHN DAVID MAGUIRE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, John David Maguire, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein John David Maguire was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit,

warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

[fol. 680] 3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Con-

stitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

[fol. 681] 8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the

Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither [fol. 682] petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded

petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facil- [fol. 683] ities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending

a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

[fol. 684] Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama;

Attorneys for Petitioner.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

*Duly sworn to by Fred D. Gray, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 685] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 687] CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the records here. Please see side folio 496, printed page 254.

[fol. 689]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. Gaylord B. Noyce, Defendant.

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IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

The State of Alabama
Montgomery County

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one Gaylord B. Noyce did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery,

Count II. Gaylord B. Noyce did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge.

IN THE COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting: You are hereby commanded to arrest Gaylord B. Noyce and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I—Disorderly conduct—T 14, Sec. 119 (1) Count II—Unlawful Assembly—T 14, Sec. 407, and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

[fol. 690]

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

No. 22,750

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THE STATE,

vs.

GAYLORD B. NOYCE.

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Charge: Disorderly Conduct and Unlawful Assembly.

Witness for State. Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

5/25/61 Warrant issued and delivered to Sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond).

5/29/61 Bond $1,000.00 approved and filed. Sureties.

9/15/61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution, in addition to fifteen (15) days in the County Jail.

Bill of Cost.

| | |
|---|---|
| Clerk's Fees | $ 2.50 |
| Solicitor's Fees | 10.00 |
| Sheriff's Fees | 10.00 |
| Library Fee | .50 |

Also Four (4) Motions as Follows:

August 11, 1961 for continuance "denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence "denied"

Clerk's Certificate to transcript (omitted in printing).

[fol. 691]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE, alias GAYLORD BREWSTER NOYCE.

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SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: Gaylord B. Noyce, alias Gaylord Brewster Noyce, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: Gaylord B. Noyce, alias Gaylord Brewster Noyce, whose is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police per-

sonnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

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[fol. 694]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

VS.

GAYLORD NOICE.

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MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch

counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Gaylord Noice did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II Gaylord Noice did meet with two or more persons to commit a breach of peac r to do an unlawful act."

[fol. 695] That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to

provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances;

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., §316(d), and imposes an un-

constitutional burden on interstate commerce in violation of Article 1, §8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the [fol. 696] commerce clause (Article 1, §8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hear-

ing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

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[fol. 697]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of Transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 701] [File endorsement omitted]

[fol. 702]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

---

THE STATE OF ALABAMA,

vs.

GAYLORD NOICE.

---

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pur-

suant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is [fol. 703] interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint, are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendants as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use [fol. 704] of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affi- [fol. 705] davit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did

disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Four-
[fol. 706] teenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant, "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against

him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

[fol. 707] 43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-state Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are

the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

[fol. 708] 51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut, by Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 709]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding.

Offense: Disorderly Conduct and Unlawful Assembly.

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STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE.

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ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT —November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding.

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STATE OF ALABAMA,
vs. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. 186
CLYDE L. CARTER.

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STATE OF ALABAMA,
vs. 187
WILLIAM S. COFFIN, JR.

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STATE OF ALABAMA,
vs. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. 189
BERNARD S. LEE.

---

STATE OF ALABAMA,
vs. 190
JOHN DAVID MAGUIRE.

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STATE OF ALABAMA,
vs. 191
GAYLORD B. NOYCE.

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STATE OF ALABAMA,
vs. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. 193
GEORGE B. SMITH.

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STATE OF ALABAMA,
vs. 194
DAVID E. SWIFT.

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STATE OF ALABAMA,
vs. 195
WYATT TEE WALKER.

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ORDER CONSOLIDATING CAUSES FOR TRIAL
—November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

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[fol. 710]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE.

---

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor [fol. 711] for Montgomery County for an additional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 712]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

GAYLORD NOICE.

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MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article I, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights [fol. 713] under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as [fol. 714] interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other

than the Defendant: (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship because between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as [fol. 715] interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

[fol. 716] 31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama.

Jack Greenberg, 10 Columbus Circle, New York, 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 718]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

Court Met Pursuant to Adjournment
Present the Honorable Eugene W. Carter, Judge Presiding
Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE.

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ORDER DENYING MOTION FOR NEW TRIAL—
February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 719]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, STATE OF ALABAMA

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

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STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

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STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

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STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

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STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

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## Stipulation and Agreement Regarding the Record on Appeal—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 720] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten

cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Error had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant, herein, a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at [fol. 721] the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of

R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, by: Fred D. Gray.

[File endorsement omitted]

[fol. 722] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 723]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 107

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GAYLORD B. NOYCE,

v.

STATE.

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Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 724]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 725] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 47

EX PARTE GAYLORD B. NOYCE.

IN RE:

GAYLORD B. NOYCE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 107, Court of Appeals of Alabama)

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APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred Gray, 34 North Perry Street, Montgomery, Alabama.

Solomon Seay, 811 West Jeff Davis, Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York.

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 726]

EX PARTE GAYLORD B. NOYCE, Petitioner.

IN RE: GAYLORD B. NOYCE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Gaylord B. Noyce, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Gaylord B. Noyce was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and un-

certain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of [fol. 727] Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the

equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

[fol. 728] 8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured

by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

[fol. 729] 11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded

petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

[fol. 730] (g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities on interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

[fol. 731] Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

*Duly sworn to by Fred D. Gray, jurat omitted in printing.*

[fol. 732] Certificate of Service (omitted in printing).

[fol. 733] Clerks' Certificates to foregoing transcript (omitted in printing).

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[fol. 735]

CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the records here. Please see side folio 496, printed page 254.

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[fol. 737]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama, Plaintiff, vs. Fred L. Shuttlesworth, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

The State of Alabama
Montgomery County

Before me, the undersigned Judge of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961, one Fred L. Shuttlesworth did disturb the peace of others by violent, profane, indecent, offensive, or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial law and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II. Fred L. Shuttlesworth did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me this 25 day of May, 1961.

Alex A. Marks, Judge.

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IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting: You are hereby commanded to arrest Fred L. Shuttlesworth and bring him before the Judge of the Court of

Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I. Disorderly Conduct, (T14, Section 119(1). Count II. Unlawful Assembly, (T14, Section 407). And have you then and there this writ with your return thereon.

Witness my hand this 25 day of May, A. D., 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

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[fol. 738]

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

Charge: Disorderly conduct and unlawful assembly.

No. 22,751

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THE STATE,

vs.

FRED L. SHUTTLESWORTH.

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TRANSCRIPT OF APPEAL TO CIRCUIT COURT

The State of Alabama
Montgomery County

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5/25/61 Warrant issued and delivered to Sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail. (or releasing him on bond)

5/29/61 Bond $1,000.00 approved and filed. Sureties.

9/15/61 Defendant tried, convicted and fined One hundred Dollars and the cost of the prosecution in addition to fifteen (15) days in the County Jail.

Bill of Cost

| | |
|---|---|
| Clerk's Fees | $ 2.50 |
| Solicitor's fees | 10.00 |
| Sheriff's fees — | 10.00 |
| Library Fees | .50 |

Also Four (4) Motions as Follows:

August 11, 1961—For continuance, "denied".
September 15, 1961—to quash "denied".
September 15, 1961—Demurrer "denied".
September 15, 1961—to exclude evidence, Denied.

Clerk's Certificate to Transcript (omitted in printing).

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[fol. 739]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH, alias FRED LEE SHUTTLESWORTH.

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SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1. That Fred L. Shuttlesworth, alias Fred Lee Shuttlesworth, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: Fred L. Shuttlesworth, alias Fred Lee Shuttlesworth, whose name is otherwise unknown to affiant, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

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[fol. 741]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA.

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STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

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MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT —Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, a Negro, a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and negro patrons of R. E. McRae. After seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly, (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Fred L. Shuttlesworth did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citi-

zens of Montgomery. Count II. Fred L. Shuttlesworth did meet with two or more persons to commit a breach of peace or to do an unlawful act.

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach [fol. 742] of the peace. Neither did defendant nor any persons in his company meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded

defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Sec. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Sec. 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, Sec. 8) of the Constitution of the United States;

8) it affirmatively appears from the warrant, affidavit and the complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this warrant, affidavit and complaint deprives defendant of rights, [fol. 743] privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the affidavit, warrant and complaint that defendant was arrested as a means of perpetuting an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this warrant and affidavit deprives defendant

of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Ala.;

Charles S. Conley, 530 So. Union St., Montgomery, Ala.;

Jack Greenberg, 10 Columbus Circle, New York 19, N.Y.;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

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[fol. 744]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the Record here. Please see side folio 9, printed page 9.

[fol. 748] [File endorsement omitted]

[fol. 749]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

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THE STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

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DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the affidavit, warrant and complaint in said cause, and separately and severally to each count thereof, and as grounds for said demurrer sets down and assigns separately and severally the following:

1. For that the said affidavit, warrant and complaint fail to allege any offense cognizable by this Court.

2. For that the affidavit, warrant and complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite warrant, affidavit and complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the warrant, affidavit, and complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require de-

fendant to stand trial on an accusation made pursuant to defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the complaint charges a violation of Code of Alabama, 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant and complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him [fol. 750] by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the warrant of arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the warrant, affidavit, and complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

10. For that the warrant, affidavit, and complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper warrant of arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the warrant of arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the warrant, affidavit, and complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this warrant, affidavit and complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the affidavit and warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and controvenes the Commerce Clause thereof and the interstate commerce Act (Title 49 U.S.C. Sec. 316 (d)).

[fol. 751] 16. For that said allegations in said complaint are charged in the alternative and one or more of said alternative does not state an offense under the laws of the State of Alabama.

17. For that said complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said warrant is based upon an Affidavit and the allegations of said affidavit fail to inform the defendant to the specific alternative under the statute which he is called upon to defend.

19. For that said complaint and affidavit are vague, indefinite and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said warrant is based upon an affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said warrant is based upon an affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said warrant of arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said affidavit fails to aver what the violent, profane, indecent,

offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said complaint and affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

[fol. 752] 26. For that Count I of said complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119 (1), but said complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119 (1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which said offenses he allegedly committed.

28. For that said complaint and affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by

conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper warrant of arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the warrant of arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the laws of the State of Alabama.

32. For aught that appears, the warrant is based upon an affidavit, and the allegations of said affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charged that the defendant "did meet with two or more persons to commit a [fol. 753] breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

34. For that Count II of the affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or to do an unlawful act".

36. For that Count II of the complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act".

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the complaint are so vague, indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof.

45. For that the allegations in the warrant and affidavit are charged in the alternative and one or more of said al-

[fol. 754] ternatives does not state an offense under the laws of the State of Alabama.

46. For that the warrant and affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the complaint is based upon an affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the affidavit and the allegations of the complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the complaint, in that said count in said affidavit charges that the defendant: "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the complaint charges that the defendant: "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large

number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the affidavit and the allegations of Count II of the complaint, in that said count in said affida it charges that the defendant: "did meet with two or more persons to commit a breach of the peace or to do an unlawful act;"

Whereas Count II of the complaint charges that the defendant: "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law [fol. 755] as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut, By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 756]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

---

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

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[fol. 757]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

---

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And

after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the court and it is the judgment of the court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor [fol. 758] for Montgomery County for an additional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and the same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 759]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

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MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the defendant in the above styled cause and moves the Court to set aside its finding of the defendant guilty and the judgment rendered thereon, to-wit: November 20, 1961, and grant the defendant a new trial; and as grounds for said Motion, the defendant sets down and assigns separately and severally the following:

1. The court erred in denying and overruling the defendant's Motion to Continue the Arraignment of the Defendant to the same day, date and time of the trial of the defendant on the merits in this cause.

2. The court erred in denying and overruling the defendant's Demurrers to the warrant, affidavit and the complaint filed in this cause.

3. The court erred in denying and overruling the defendant's Motion to Quash the warrant, affidavit and the complaint filed in this cause.

4. The Court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The court erred in sustaining the State's oral motion to strike the exhibits attached to defendant's motion to exclude the State's evidence.

6. The court erred in ruling that the exhibits attached to defendant's motion to exclude the State's evidence were inadmissible.

7. The court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the defendant in this case under the evidence introduced was a denial of defendant's rights under Article 1, Section IV of the Constitution of Alabama, 1901.

9. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights to the due process of law guaranteed by Article 1, Section VI of the Constitution of Alabama, 1901.

11. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights of due process of law guaranteed by Article 1, Section 13 of the Constitution of Alabama, 1901.

12. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under Article 1, Section 7 of the Constitution of Alabama, 1901.

[fol. 760] 13. The subjection of the defendant to trial on the affidavit and complaint filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1 of the Constitution of Alabama, 1901.

14. The subjection of the defendant to trial on the affidavit filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State to the introduction of evidence offered on behalf of the defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the court is contrary to the evidence in the case.

18. The judgment of the court is contrary to the law in the case.

19. The judgment of the court is contrary to the weight of the evidence in the case.

20. The judgment of the court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the defendant was based upon a complaint which said complaint did not allege when the alleged offense was committed.

22. That the conviction of the defendant was based upon a complaint, and for aught that appeared in the complaint, this action was barred by the statute of limitations.

23. That there was a fatal variance between the allegations of the affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the defendant committed the offenses with which he is charged, that conviction of the defendant upon the facts proved deprived the defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this

case, is unconstitutional because it deprives the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution [fol. 761] of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119(1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, indefinite and uncertain that they afford no fair warning to the defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119(1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendant: (a) without proof that the defendant had any intent to commit a crime; (b) without proof that the defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship

between the acts of the defendant and the acts or threatened acts in breach of the peace by persons other than the defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and [fol. 762] permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the state, or any agency of the state, under the Fourteenth Amendment.

30. The conviction of the defendant under the evidence in this case:

(a) Violated defendants privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States pursuant to the Fourteenth Amendment to the Constitution of the United States.

(b) violated defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment of the Constitution of the United States;

(e) violated defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) Denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the interstate Commerce Act (Title 49, U.S.C. Section 316(d) and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Con- [fol. 763] stitution of the United States and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 So. Union St., Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

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[fol. 765]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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THE STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

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ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 766]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

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STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

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STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

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STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

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STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

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STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 767] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in the case of State of Alabama vs. Ralph D. Aber- be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in each of said cases and that said testimony may nathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assign-

ment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at the lunch [fol. 768] counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After seating himself at the lunch counter with

his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1961.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

[File endorsement omitted]

[fol. 769] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 771]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 108

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FRED L. SHUTTLESWORTH,

v.

STATE.

---

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 772]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 773] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 48

EX PARTE FRED L. SHUTTLESWORTH

IN RE: FRED L. SHUTTLESWORTH, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 108, Court of Appeals of Alabama)

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APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Dénied: No Opinion

[fol. 774]

EX PARTE FRED L. SHUTTLESWORTH, Petitioner

IN RE: FRED L. SHUTTLESWORTH, Appellant,

vs.

STATE OF ALABAMA, Appellee.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Fred L. Shuttlesworth, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Fred L. Shuttlesworth was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, [fol. 775] warrant, and complaint are so vague, indefinite,

and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint, where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119(1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the [fol. 776] Constitution of the United States, nor deny to

him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and eminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner

[fol. 777] rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

[fol. 778] (f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection

afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1) of the Constitution.

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

[fol. 779] Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama,

Attorneys for Petitioner.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

*Duly sworn to by Fred D. Gray, jurat omitted in printing.*

[fol. 780] Certificate of Service (omitted in printing).

[fol. 781] Clerks' Certificates to foregoing transcript (omitted in printing).

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[fol. 783]

CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

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[fol. 785]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled the State of Alabama, Plaintiff vs. George B. Smith, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge of the Court of Common Pleas of Montgomery personally appeared M. S. Butler who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one George B. Smith did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come to Montgomery, Alabama, which was subject to martial rule and did unlawfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count 2: George B. Smith did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks.

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IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greetings:

You are hereby commanded to arrest George B. Smith and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of:

Count 1: Disorderly conduct (T.14, Sec. 119(1))

Count 2: Unlawful Assembly (T.14, Sec. 407)

and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, A.D., 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

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[fol. 786]

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

No. 22,752

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THE STATE,

vs.

GEORGE B. SMITH.

---

Charge: Disorderly Conduct, Unlawful Assembly

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5/25/61 Warrant issued and delivered to Sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail (or releasing on bond).

5/29/61 Bond, $1,000.00 Approved and filed, Sureties.

9/15/61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution. In addition to fifteen (15) days in the County Jail.

Also Four (4) Motions as Follows:
August 11, 1961—for continuance—Denied
September 15, 1961—to quash Denied
September 15, 1961—Demurrer—Denied
September 15, 1961—to exclude evidence, Denied.

Bill of Cost.

| | |
|---|---|
| Clerk's fees | $ 2.50 |
| Solicitor's fees | 10.00 |
| Sheriff's fees | 10.00 |
| Library fees | .50 |

Clerk's Certificate to Transcript (omitted in printing).

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[fol. 787]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

GEORGE B. SMITH, alias
GEORGE BUNDY SMITH.

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SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford and alleges that:

Count 1: George B. Smith, alias George Bundy Smith, whose names is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: George B. Smith, alias George B. Smith, alias George Bundy Smith, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama and it was necessary for his own safety for him to be protected by military and civil police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

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[fol. 789]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

VS.

GEORGE SMITH.

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MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both Negro and white races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an agent, R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119(1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

"George Smith did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Mont-

gomery. Count II. George Smith did meet with two or more persons to commit a breach of the peace or to do an unlawful act."

[fol. 790] That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens travelling throughout the United States, pursuant to the Fourteenth Amendment of the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection af-

forded defendant by the due process clause of the Fourteenth Amendment of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Sec. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Sec. 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate commerce carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, Sec. 8), of the Constitution of the United States:

[fol. 791] 8) it affirmatively appears from the warrant, affidavit and the complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom and usage of enforced racial segregation in the use of facilities and service which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this warrant, affidavit and complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein):

9) it affirmatively appears from the affidavit, warrant and complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this warrant and affidavit deprives defendant

of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the finding of the United States District Court for the Middle District of Alabama, is annexed hereto as Exhibit A, and made a part hereof.

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 So. Union St., Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

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[fol. 792]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

H. L.

[fol. 797]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

v.

GEORGE SMITH.

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DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the affidavit, warrant and complaint, in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said affidavit, warrant and complaint fail to allege any offense cognizable by this court.

2. For that the affidavit, warrant and complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the warrant, affidavit and complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite warrant, affidavit and complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the fourteenth Amendment to the Constitution of the United States.

4. For that the warrant, affidavit, and complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1) which said act is vague, indefinite and uncertain. To require de-

fendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that count II of the complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama 1940, and/or Title 14, Section 407, Code of Alabama 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and complaint in this case, it is unconstitutional [fol. 798] in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the warrant, affidavit and complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

10. For that the warrant, affidavit, and complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper warrant of arrest was issued for the arrest of defendant prior to the time the defendant was arrested.

12. For that the warrant of arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the affidavit, warrant and complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the warrant, affidavit, and complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this warrant, affidavit, and complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316 (d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the affidavit and warrant that defendant was arrested as a means of perpetuting an unlawful and unconstitutional practice, custom and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this warrant and affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitu- [fol. 799] tion of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49, U.S.C. Sec. 316(d)).

16. For that said allegations in said complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said warrant is based upon an affidavit and the allegations of said affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said complaint and affidavit are vague, indefinite and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said warrant is based upon an affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said warrant is based upon an affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive, or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said affidavit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said complaint and affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119 (1).

[fol. 800] 26. For that Count I of said complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1) but said complaint is vague, indefinite and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said complaint and affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterout conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of the statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper warrant of arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the warrant of arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

32. For aught that appears, the warrant is based upon an affidavit, and the allegations of said affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the complaint charges that the defendant did meet with two or more persons to commit a breach of the peace or to do an unlawful act, but said [fol. 801] count fails to allege any facts in support thereof.

34. For that Count II of the affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the complaint fails to allege any offense cognizable by this Court.

38. For that the complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316, (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the warrant and affidavit are charged in the alternative and one or more of said al- [fol. 802] ternative does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the complaint is based upon an affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the affidavit and the allegations of the complaint.

50. That there is a fatal variance between the allegations of Count I of the affidavit and the allegations of count I of the complaint, in that said count in said affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery."

Whereas Count I of the complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing the said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the affidavit and the allegations of Count II of the complaint, in that said count in said affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act."

Whereas count II of the complaint charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were [fol. 803] under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama; and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 804]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

GEORGE B. SMITH.

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ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—

November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY

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STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES

---

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE

---

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE

---

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOICE

---

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH

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STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH

---

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT

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STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER

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ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

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[fol. 805]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

GEORGE SMITH.

---

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the court being of opinion, it is considered and ordered by the Court, and it is the judgment of the court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the court and it is the judgment and sentence of the court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the court that the said defendant perform hard labor for Montgomery [fol. 806] County for an additional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals for Alabama, the defendant in open court gives notice of appeal and asks for suspension of sentence pending said appeal. It is Therefore considered and ordered by the Court that this sentence be and the same is hereby suspended pending appeal and that pending appeal

the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

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[fol. 807]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

VS.

GEORGE SMITH.

---

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the defendant in the above styled cause and moves the Court to set aside its finding of the defendant guilty and the judgment rendered thereon, on, to-wit: November 20, 1961, and grant the defendant a new trial; and as grounds for said motion, the defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the defendant's motion to continue the arraignment of the defendant to the same day, date and time of the trial of the defendant on the merits of this cause.

2. The court erred in denying and overruling the defendant's demurrers to the warrant, affidavit, and the complaint filed in this cause.

3. The court erred in denying and overruling the defendant's motion to quash the warrant, affidavit, and the complaint filed in this cause.

4. The court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of the state's evidence.

5. The court erred in sustaining the state's oral motion to strike the exhibits attached to defendant's motion to exclude the state's evidence.

6. The Court erred in ruling that the exhibits attached to defendant's motion to exclude the State's evidence were inadmissible.

7. The Court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of all the evidence.

8. The conviction of the defendant in this case under the evidence introduced was a denial of defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights to the due process of law guaranteed by Article 1, Section VI of the Constitution of Alabama, 1901.

11. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights to due process of law guaranteed by Article 1, Section 13 of the Constitution of Alabama, 1901.

12. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under Article 1, Section 7 of the Constitution of Alabama, 1901.

13. The Subjection of the defendant to trial on the affi-
[fol. 808] davit and complaint filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7 and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the defendant to trial on the affidavit filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the defendant.

16. The court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the court is contrary to the evidence in the case.

18. The judgment of the court is contrary to the law in the case.

19. The judgment of the court is contrary to the weight of the evidence in the case.

20. The judgment of the court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the defendant was based upon a complaint, which said complaint did not allege when the alleged offense was committed.

22. That the conviction of the defendant was based upon a complaint, and for aught that appeared in the complaint, this action was barred by the statute of limitations.

23. That there was a fatal variance between the allegations of the affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses as charged, the prosecution having failed to present any evidence upon which it could rationally be found that the defendant committed the offenses with which he is charged, that conviction of the defendant upon the facts proved deprived the defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the defendant rights secured by him by the

Interstate Commerce act and the commerce clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by [fol. 809] arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119, (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) The statutes fail to give the defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119, (1) Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection

clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendant: (a) without proof that the defendant had any intent to commit a crime; (b) without proof that the defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the defendant and the acts or threatened acts in breach of the peace by persons other than the defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary, and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially [fol. 810] mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the defendant under the evidence of this case:

(a) violated defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate commerce act (Title 49, U.S.C. Section 316 (d)), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8 of the Constitution).

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of

the Constitution of the United States and the Interstate Commerce Act.

[fol. 811] 32. The judgment of the Court is so excessive as to deprive the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 So. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 813]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

GEORGE SMITH.

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ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 814]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 815] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assign-

ment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court of Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 5, 1961, defendant herein, a Negro, a citizen of the United States, accompanied by ten others, was arrested in [fol. 816] the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at the lunch counter in the company of others of both Negro and White Races, in the bus terminal waiting room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was

approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the defendants, by: Fred D. Gray.

[File endorsement omitted]

[fol. 817] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 818]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 109

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GEORGE SMITH,

v.

STATE.

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Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 819]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through His Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 820] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 49

Ex Parte GEORGE SMITH

In Re:

GEORGE SMITH, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 109, Court of Appeals of Alabama)

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APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred Gray, 34 North Perry Street, Montgomery, Alabama.

Solomon Seay, 811 West Jeff Davis Avenue, Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York.

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 821]

Ex Parte George Smith, Petitioner

In Re: George Smith, Petitioner,

vs.

State of Alabama, Appellee.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, George Smith, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by Court of Appeals of Alabama on the 23rd day of October, 1962, wherein George Smith was the petitioner and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the

Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

[fol. 822] 3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash; and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the affidavit and the complaint where the affidavit alleged in the alternative that defendant disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace," while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 823] 9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him, was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion [fol. 824] guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of Certiorari.

[fol. 825] Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis, Montgomery, Alabama,

Attorneys for Applicant.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York.

Louis H. Pollak, New Haven, Connecticut..

*Duly sworn to by Fred D. Gray, jurat omitted in printing.*

Certificate of Service (omitted in printing).

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[fol. 826] Clerks' Certificates to foregoing transcript (omitted in printing).

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[fol. 828] CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

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[fol. 830]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama, Plaintiff vs. David E. Swift, Defendant.

IN COURT OF COMMON PLEAS, MONTGOMERY COUNTY,

STATE OF ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one David E. Swift did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II

David E. Swift did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge.

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IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County
To Any Lawful Officer of the State of Alabama, Greeting:

You are hereby commanded to arrest David E. Swift and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I—Disorderly Conduct—T 14, Sec. 119(1) Count

II—Unlawful Assembly—T 14, Sec. 407, and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

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[fol. 831]

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

No. 22,753

Charge: Disorderly Conduct and Unlawful Assembly

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

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THE STATE,

vs.

DAVID E. SWIFT.

---

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

5/25/61—Warrant issued and delivered to Sheriff.

5/25/61—Warrant executed by arresting the defendant and committing him to jail. (or releasing him on bond)

5/29/61—Bond $1,000.00 approved and filed.

9/15/61—Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution, in addition to fifteen (15) days in the County Jail.

Bill of Cost

| | |
|---|---|
| Clerk's fees | $ 2.50 |
| Solicitor's fees | 10.00 |
| Sheriff's fees | 10.00 |
| Library fee | .50 |

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence—"denied"

Clerk's Certificate to Transcript (omitted in printing)

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[fol. 832]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

VS.

DAVID E. SWIFT, alias DAVID EVERETT SWIFT.

---

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: David E. Swift, alias David Everett Swift, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil personnel; Count 2: David E. Swift, alias David Everett Swift, whose name is to affiant otherwise unknown, did meet with two

or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

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[fol. 835]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

v.

DAVID SWIFT.

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MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a White person, a citizen of the United States, accompanied by ten others, was

arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "David Swift did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II David Swift did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or [fol. 836] boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denied defendant the right to travel in interstate carriers and have free access to the terminal and other facili-

ties of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., §316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, §8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, §8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit [fol. 837] and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States

District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

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[fol. 838]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 842] [File endorsement omitted]

[fol. 843]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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THE STATE OF ALABAMA,

v.

DAVID SWIFT.

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DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Compliant fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit, and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count 1 of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pur-

suant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is [fol. 844] interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the [fol. 845] use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace: but saitl complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affidavit fails to aver what the violent, profane, indecent,

[fol. 846] offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane,

indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defen- [fol. 847] dant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or do an unlawful act;" but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

[fol. 818] 44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-State Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob

action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II [fol. 849] of the Complaint, in that said Count in said Affidavit charges that the defendant:

"did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

"did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said City and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully Submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

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[fol. 850]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

DAVID E. SWIFT.

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ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT —November 14, 1961

This day came the State by its Solicitor and came also the defendant, in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

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STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 851]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

---

STATE OF ALABAMA,

vs.

DAVID E. SWIFT.

---

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the some is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is

guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 852] of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 853]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

v.

DAVID SWIFT.

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MOTION FOR NEW TRIAL—December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights [fol. 854] under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as

[fol. 855] interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendant; (a) without proof that the De-

fendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, [fol. 856] and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and acccess, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in [fol. 857] contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, N.Y.

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

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[fol. 859]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA,

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

DAVID E. SWIFT.

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ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set

aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

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[fol. 860]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

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STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

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STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 861] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the

Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was refiled in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated [fol. 862] at the lunch counter in the company of others of both the Negro and White races, in the bus terminal wait-

ing room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro Patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, by: Fred D. Gray.

[File endorsement omitted]

[fol. 863] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 864]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 110

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DAVID E. SWIFT,

v.

STATE.

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Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 865]

IN COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 866] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 50

EX PARTE DAVID E. SWIFT

IN RE: DAVID E. SWIFT, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 110, Court of Appeals of Alabama)

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APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants: Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama;

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 867]

EX PARTE DAVID E. SWIFT, Applicant,

IN RE: DAVID E. SWIFT, Appellant,

vs.

STATE OF ALABAMA, Appellee.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your applicant, David E. Swift, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein David E. Swift was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your applicant avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your applicant further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your applicant in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of applicant's contention that the affidavit, [fol. 868] warrant, and complaint are so vague, indefinite, and uncertain that the applicant was deprived of due process of law guaranteed to him by the Fourteenth Amend-

ment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred (Motion to Quash) in holding that the applicant's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the applicant alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the applicant was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and service which are an integral part of interstate commerce, thereby depriving applicant of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the affidavit and the complaint where the affidavit alleged in the alternative that defendant disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace," while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this applicant, abridge the right of free speech and [fol. 869] assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the applicant of a crime (a) without proof that the applicant had any intent to commit a crime; (b) without proof that the applicant had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of applicant and the acts or threatened acts in breach of the peace by persons other than the applicant. Applicant was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the applicant has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of applicant in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged the prosecution having failed to present any evidence upon which it could rationally be found that the applicant committed the offenses with which he is charged, that conviction of the applicant upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the applicant rights secured [fol. 870] by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of applicant in that the evidence showed that neither applicant, nor any of the persons who accompanied him, was not engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did applicant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Applicant and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of applicant and the others with whom he was associated under these circumstances:

(a) violates applicant's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates applicant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates applicant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates applicant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates applicant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates applicant's right not to be tried on charges [fol. 871] so vague as to transgress the procedural protection afforded applicant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies applicant the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., pp. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives applicant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

[fol. 872] Wherefore, your applicant prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your applicant further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of his petition.

Respectfully Submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Applicant.

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama.

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

*Duly sworn to by Fred D. Gray, jurat omitted in printing.*

[fol. 873] Certificate of Service (omitted in printing).

[fol. 874] Clerks' Certificates to foregoing transcript (omitted in printing).

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[fol. 876]

CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

[fol. 878]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. Wyatt Tee Walker, Defendant.

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IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one Wyatt Tee Walker did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II Wyatt Tee Walker did meet with two or more persons to commit a breach of peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

You are hereby commanded to arrest Wyatt Tee Walker and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I Disorderly Conduct (T 14, Sec. 119 (1) Count II Unlawful Assembly (T 14, Sec. 407), and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, A. D. 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

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[fol. 879]

IN THE COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, ALABAMA
No. 22,754

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THE STATE,
vs.
WYATT TEE WALKER.

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TRANSCRIPT OF APPEAL TO CIRCUIT COURT

Charge: Disorderly Conduct and Unlawful Assembly.

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5-25-61 Warrant issued and delivered to Sheriff.

5-25-61 Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond).

5-29-61 Bond $1,000.00 approved and filed. Sureties.

9-15-61 Defendant tried, convicted and punishment fixed at ninety (90) days in the County Jail.
Defendant appealed to the present term of the Circuit Court and bond fixed at $.....
Appeal Bond $..... Approved and filed.
Sureties.

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence—"denied"

Bill of Cost.

| | |
|---|---|
| Clerk's Fees | $ 2.50 |
| Solicitor's fees | 10.00 |
| Sheriff's fees | 10.00 |
| Library fees | .50 |

Clerk's Certificate to Transcript (omitted in printing).

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[fol. 880]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

No. 195

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STATE OF ALABAMA,

vs.

WYATT TEE WALKER, alias W. TEE WALKER.

---

(DC and Unlawful Assembly)

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that Wyatt Tee Walker,

alias W. Tee Walker, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large [fol. 881] number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

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[fol. 882]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Case No. 195

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STATE OF ALABAMA,

vs.

WYATT T. WALKER.

---

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT —Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was standing near the telephone booth talking to Mr. Floyd Mann in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to [fol. 883] an 'agent', R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After accompanying his companions to the "White" waiting room, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Wyatt T. Walker did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of

Montgomery. Count II. Wyatt T. Walker did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

[fol. 884] 3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded

defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., pp.316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, pp.8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, pp.8) of the constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part [fol. 885] of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection

of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

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CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 890] [File endorsement omitted]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

Case No. 195

THE STATE OF ALABAMA,

vs.

WYATT T. WALKER.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which

said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

[fol. 891] 6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage [fol. 892] of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U. S. C. Sec. 316 (d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316 (d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

[fol. 893] 23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did

disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or langauge or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the [fol. 894] disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the Defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privi-

leges, and immunities guaranteed to him by Constitution [fol. 895] of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and [fol. 896] intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

"did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

"did meet wtih two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 897]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

WYATT TEE WALKER.

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ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—
November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA
Court Met Pursuant to Adjournment
Present the Honorable Eugene W. Carter, Judge Presiding

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

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STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

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STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

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STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

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STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

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ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

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[fol. 898]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

---

THE STATE OF ALABAMA,

vs.

WYATT TEE WALKER.

---

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And

after hearing all the evidence presented on behalf of the State, the Defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is gullty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor [fol. 899] for Montgomery County an additional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and the same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 900]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,

vs.

WYATT T. WALKER.

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MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's Evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under Article 1, Section 7, of the Constitution of Alabama, 1901.

[fol. 901] 13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be founded that the Defendant committed the offense with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as

[fol. 902] interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the Defendant: (a) without proof that the Defendant

had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

[fol. 903] 29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation [fol. 904] of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation

of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 906]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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THE STATE OF ALABAMA,

vs.

WYATT TEE WALKER.

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ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and

being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court, the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

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[fol. 907]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

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STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

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STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH,

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STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

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STATE OF ALABAMA,

vs. No. 195

WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 908] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it

shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was standing near the [fol. 909] telephone booth talking to Mr. Floyd Mann, in the bus terminal waiting room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Cor-

poration, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After accompanying his companions to the "White" waiting room, defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

By: Fred D. Gray

[File endorsement omitted]

[fol. 910] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 911]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 111

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WYATT TEE WALKER,

v.

STATE.

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Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 912]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING —November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 913] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 51

EX PARTE WYATT TEE WALKER

IN RE: WYATT TEE WALKER, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 111, Court of Appeals of Alabama)

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APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 914]

EX PARTE WYATT TEE WALKER, Applicant

IN RE: WYATT TEE WALKER, Appellant,

vs.

STATE OF ALABAMA, Appellee.

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To the Honorable Chief Justice and Associate of the Supreme Court of Alabama:

Your applicant, Wyatt Tee Walker, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Wyatt Tee Walker was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your applicant in this:

1. The Court of Appeals erred in holding that the affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and un-

certain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the applicant's Motion to Quash the Warrant, Affidavit and complaint in this cause was properly denied where the applicant alleged in his Motion to Quash, and presented evidence [fol. 915] to sustain the allegations, that the arrest of the applicant was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving applicant of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the affidavit and the complaint where the affidavit alleged in the alternative that defendant disturbed the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace, while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to exclude the evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119(1), Title 14, Code, do not either in themselves or as construed and applied to this applicant, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal

protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119(1) as interpreted and applied in convicting the applicant of a crime (a) without proof that the applicant had any intent to commit a crime; (b) without proof that the applicant had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of applicant and the acts or threatened acts in breach of the peace by persons other than the applicant. Applicant was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 916] 9. The Court of Appeals erred in affirming the conviction of defendant below where the state failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the applicant has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of applicant in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the applicant committed the offenses with which he is charged, that conviction of the applicant upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901,

Article 1, Section 6, and deny the applicant rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of applicant in that the evidence showed that neither applicant, nor any of the persons who accompanied him, was not engaged in any conduct that could be characterized as violent, profane, indecent, offensive; or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did applicant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Applicant and his companions, were either clerics and or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of applicant and the others with whom he was associated under these circumstances:

(a) violates applicant's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment of the Constitution of the United States;

[fol. 917] (b) violates applicant's right to freedom of speech guranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates applicant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates applicant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates applicant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates applicant's right not to be tried on charges so vague as to transgress the procedural protection af-

forded applicant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies applicant the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., pp. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives applicant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham, about previous statements inconsistent with statement made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statement.

[fol. 918] Wherefore, your applicant prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your applicant further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Applicant.

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama.

of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

*Duly sworn to by Fred D. Gray, jurat omitted in printing.*

[fol. 919] Certificate of Service (omitted in printing).

[fol. 920] Clerks' Certificates to foregoing transcript (omitted in printing).

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[fol. 922] CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

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[fol. 924]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. Bernard S. Lee, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961, one Bernard S. Lee did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery (T. 14, Sec. 119(1)).

Count 2: Bernard S. Lee did meet with two or more persons to commit a breach of the peace or to do an unlawful act. (T. 14, Sec. 407), against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me this 25 day of May, 1961.

Alex A. Marks, Judge.

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IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting:

You are hereby commanded to arrest Bernard S. Lee and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count 1: Disorderly Conduct (T. 14, Sec. 119

[fol. 925] (1)) Count 2: Unlawful Assembly (T. 14, Sec. 407) and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, A. D., 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

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IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

No. 22,748

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THE STATE

vs.

BERNARD S. LEE

---

The State of Alabama
Montgomery County

Charge: Disorderly Conduct, Unlawful Assembly.

Witness for State. Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5/23/61 Warrant issued and delivered to Sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond).

5/29/61 Bond $1,000.00 approved and filed. Sureties.

9/15/61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution, in addition to ten (10) days in the County Jail.
Defendant appealed to the present term of the Circuit Court and bond fixed at $.....
Appeal Bond $..... Approved and filed. Sureties.

Bill of Cost.

| | |
|---|---|
| Clerk's Fees | $ 2.50 |
| Solicitor's Fees | 10.00 |
| Sheriff's Fees | 10.00 |
| Library fees | .50 |

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"Denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence—"denied"

Clerk's Certificate to transcript (omitted in printing).

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[fol. 926]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

(DC and Unlawful Assembly)

No. 189

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STATE OF ALABAMA

vs.

BERNARD S. LEE, alias
BERNARD SCOTT LEE

---

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: Bernard S. Lee, alias Bernard Scott Lee, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of peace, in that he did wilfully and intentionally seek service at a public lunch

counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police [fol. 927] personnel;

Count 2: Bernard S. Lee, alias Bernard Scott Lee, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 928]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

No. 189

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STATE OF ALABAMA

vs.

BERNARD LEE

---

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion [fol. 929] sets down and assigns the following:

On May 25, 1961, defendant herein, is a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both Negro and White races in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Bernard Lee did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II Bernard Lee did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace of to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice [fol. 930] under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., pp. 315 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, pp. 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, pp. 8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful

and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause [fol. 931] thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[File endorsement omitted]

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[fol. 932] CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

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[fol. 936]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Case #189

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THE STATE OF ALABAMA,

vs.

BERNARD LEE.

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DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial [fol. 937] on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119(1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States; and Commerce Clause of the Constitution of the

United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

[fol. 938] 11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U. S. C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 939] 20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affidavit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama [fol. 940] 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or bois-

terous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant [fol. 941] met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segre-

gation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-state Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged [fol. 942] offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when

the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

"did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

"did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

"did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police

personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

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[fol. 943]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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STATE OF ALABAMA,

vs.

BERNARD S. LEE.

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ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney

and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 944]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

---

STATE OF ALABAMA,

vs.

BERNARD LEE.

---

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and

it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 945] of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 946]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Case #189

STATE OF ALABAMA,

vs.

BERNARD LEE.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to [fol. 947] the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the [fol. 948] equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (a), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the

basis of mere threatened breach of the peace by persons other than the Defendant: (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal re-
[fol. 949] lationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (a), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the

due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate [fol. 950] carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United

States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

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[fol. 952]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

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THE STATE OF ALABAMA,

vs.

BERNARD LEE.

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ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein

being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

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[fol. 953]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

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STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

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STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

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STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

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STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

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STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

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STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

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STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

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STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

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STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the Court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 954] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the

Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforesaid cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was refiled in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at the lunch [fol. 955] counter in the company of others of both the Negro and white races, in the bus terminal waiting room

designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent," R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corp. which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae; after seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 So. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

[File endorsement omitted]

[fol. 956] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 957]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 105

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BERNARD S. LEE,

v.

STATE.

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Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962.

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 958]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 959] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 45

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EX PARTE BERNARD S. LEE

IN RE: BERNARD S. LEE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

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(3 Div. 105, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon Seay, 811 West Jeff Davis Avenue, Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 960]

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EX PARTE BERNARD S. LEE, Petitioner,

IN RE: BERNARD S. LEE, Petitioner,

vs.

STATE OF ALABAMA, Appellee.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Bernard S. Lee, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Bernard S. Lee was the petitioner and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of [fol. 961] enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the affidavit and the complaint where the affidavit alleged in the alternative that defendant disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace," while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right to free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119(1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and eminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

[fol. 962] 10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither

petitioner, nor any of the persons who accompanied him, was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate [fol. 963] carriers and have free access to the terminal

and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution.

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr.
Attorneys For Applicant

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama;

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

[fol. 964] *Duly sworn to by Fred D. Gray, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 965] Clerk's Certificate to foregoing transcript (omitted in printing).

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[fol. 967] CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the records here. Please see side folio 496, printed page 254.

[fol. 969]

SUPREME COURT OF THE UNITED STATES

No. 575—October Term, 1963

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RALPH D. ABERNATHY, et al., Petitioners,

vs.

ALABAMA.

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ORDER ALLOWING CERTIORARI—January 6, 1964

The petition herein for a writ of certiorari to the Court of Appeals of the State of Alabama is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black and Mr. Justice White took no part in the consideration or decision of this petition.